IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 29849 of 2005(C)

AGAINST THE ORDER IN EP 139/2004. IN OS.327/2003 of PRL.M.C., KOCHI

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PETITIONER:

MURALI MENON, PROPRIETOR, M/S. DELTA TRADING CORPORATION, LEEGEES CORPORATION BUILDING, G.V. IYER ROAD, KOCHI-3, S/O. K. NARAYANA MENON, NOW RESIDING AT KUDIYEDATH HOUSE, NEW ROAD, KOCHI-2.

BY ADV. SRI.JOSHI N.THOMAS

RESPONDENTS:

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1. **MRS. K.G. LEELA, W/O. LATE E.N. GOPINATHAN, `SINDOOR' ANCHALI GARDENS, GANDHI NAGAR, KOTTAYAM - CO.OWNER OF M/S. LEEGEES CORPORATION, G.V. IYER ROAD, WILLINGTON ISLAND, KOCHI-3.**

2. **MRS. GEETHA RAMANUJAN, W/O. RAMANUJAN, SANTO GOPALAN ROAD, KOCHI-5, CO-OWNER OF M/S. LEEGEE CORPORATION, G.V. IYER ROAD, WILLINGTON ISLAND, KOCHI-3.**

3. **ANITHA JAYAKUMAR, W/O. DR. JAYAKUMAR, SINDOOR, KOTTAYAM, CO-ONWER OF M/S. LEEGEE CORPORATION, G.V. IYER ROAD, WILLINGTON ISLAND, KOCHI-3.**

4. **SANGEETHA JAISINGH, W/O. JAISINGH, GOVINDAN, KOTTAYAM, CO-OWNER OF M/S. LEEGEE CORPORATION, G.V. IYER ROAD, WILLINGTON ISLAND, KOCHI-3.**

BY ADV. SRI.N.N.SUGUNAPALAN (SR.) for R2
SRI.S.SUJIN for R1,R3 & R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.29849/2005 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF JUDGMENT DTD. 31/01/2004 IN O.S.NO.327 OF 2003, ON THE FILE OF PRINCIPAL MUNSIFF'S COURT, KOCHI.**

EXT.P2: **COPY OF EXECUTION PETITION IN E.P.NO.139/04 DTD. 15/06/2004 ON THE FILE OF PRINCIPAL MUNSIFF'S COURT, KOCHI.**

EXT.P3: **COPY OF NOTICE OF ARREST AGAINST THE PETITIONER ISSUED UNDER RULE 37 ORDER XXI OF C.P.C. BY THE PRINCIPAL MUNSIFF'S COURT, KOCHI.**

EXT.P4: **COPY OF 'A' DIARY PROCEEDING DTD. 4/01/2005 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT,KOCHI.**

EXT.P5: **COPY OF AFFIDAVIT AND PETITION FILED BY THE PETITIONER BEFORE THE PRINCIPAL MUNSIFF'S COURT, KOCHI.**

EXT..P6: **COPY OF ORDER DTD. 5/01/2005 OF THE ADDL.MUNSIFF'S COURT, KOCHI.**

EXT.P7: **COPY OF JUDGMENT DTD. 17/01/2005 IN WP(C) NO.1685/2005 (A) OF THE HONOURABLE HIGH COURT OF KERALA.**

EXT.P8: **COPY OF AFFIDAVIT AND PETITION DTD. 11/2/2005 FILED BY ADVOCATE A.P.UNNI KRISHNAN BEFORE THE PRINCIPAL MUNSIFF'S COURT, KOCHI.**

EXT..P9: **COPY OF JUDGMENT DTD. 28/06/2005 IN WP(C) NO.5157/2005L OF THIS HONOURABLE COURT.**

EXT.P10: **COPY OF ORDER DTD. 2/09/2005 IN E.P.NO.139 OF 2004 IN O.S.NO.327 OF 2003 OF THE PRINCIPAL MUNSIFF'S COURT, KOCHI.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 29849 of 2005

Dated this the 8th day of August , 2007

JUDGMENT

Impugning in this writ petition filed by the judgment debtor under Article 227 of the Constitution is Ext.P10 order by which the learned Munsiff found that the petitioner/judgment debtor is liable to be arrested and detained in civil prison in Execution of the money portion of the decree which was also fo recovery of possession of a building which had been let out to the petitioner. It is not the first time the petitioner has approached this court impugning order of arrest passed by the Execution court. As rightly noticed by the learned Munsiff when the execution was adjourned for taking further steps for recovery of the money portion of the decree, the petitioner approached this court by filing W.P.(C) No.249931/2004. In that writ petition this court became inclined to order stay of the execution proceedings by imposing a condition that the petitioner shall pay a sum of Rs.40,000/- which significantly comes to roughly 50% of the

entire decree debt within one month. When it was seen that the above condition had not been complied with within the time stipulated, the court issued arrest warrant against the petitioner. He was arrested and produced before the court pursuant to that order. He executed a kaichit with two sureties giving an undertaking to the court to pay a sum of Rs.5,000/- on 5.1.2005 and to be present on that day. On 5.1.2005 he neither appeared before the court nor did make any payment. Naturally the bond and the kaichit stood cancelled and the court below became obliged to repeat arrest warrant against the judgment debtor. It appears that the above order of arrest was challenged by the petitioner in this court by filing W.P.(C) No.1685/2005. That writ petition was disposed of at the admission stage itself without issuing notice to the decree holder. This court, which did not have the advantage of hearing the version of the decree holder, was obviously impressed by the ground raised in that writ petition, that the order of arrest was not preceded by any enquiry as envisaged under Rule 40 of Order 21 CPC. This court, accordingly, passed Ext.P9 judgment directing the court below to conduct an eqnuiry into the means of the judgment debtor

before issuing the arrest warrant. Thereafter the court below posted the case on several occasions so that the judgment debtor could adduce counter evidence in reply to the evidence which had been adduced by the decree holder already. When it was seen that the judgment debtor was not adducing evidence, the execution court again became obliged to order arrest of the petitioner. Once again the petitioner came to this court and filed W.P.(C) No.5157/2005. This court stayed the order of arrest imposing a condition that the petitioner shall deposit a sum of Rs.10,000/- towards the decree debt within one month. After getting interim relief from this court suffering a condition the petitioner never bothered to comply with the condition. Finally that writ petition was disposed of by Ext.P9 judgment. Under Ext.P9 judgment this court approved the action of the court below issuing arrest warrant against the petitioner. However, this court also directed the court below to enquire into the means as already directed under Ext.P7. Thereafter, enquiry was conducted. Interestingly no courter or statement of objections was filed by the petitioner contending specifically that he is not having means to pay the decree debt in a lump or substantial

portion thereof. However, as per the direction of this court in Ext.P7 and Ext.P9 enquiry was conducted and in the enquiry the petitioner got himself examined. The learned Munsiff on an evaluation of the evidence found that the petitioner's testimony PW1 was not at all convincing and also that testimony did not have any foundation in any written objection filed by him. Accordingly Ext.P10 was passed issuing arrest warrant for arresting the petitioner.

2. This court in **Kuppuswamy v. P.G.Menon (1992 (2) KLT 203)** has held that burden of the decree holder to prove the means of the judgment debtor so as to justify the arrest and detention of the judgment debtor in civil prison in terms of the Section 51 of the CPC will discharged by adducing formal evidence. Once that initial burden is discharged, it is for the judgment debtor to adduce cogent evidence and substantiate his contentions that he is not liable to be arrested since there has been no wilful negligence on his part in the matter of obeying the decree debt. As already noticed by the Execution Court and has already stated, the petitioner did not even filed any objection before the execution court in answer to the proposal to arrest

regarding which notice under Rule 37 was given. The appreciation of the evidence by the learned Munsiff was quite proper and I do not at any rate find any warrant for invoking supervisory jurisdiction of this court under Article 227 so as to set aside Ext.P10.

Challenge against Ext.P10 fails. The writ petition will stand dismissed.

PIUS C. KURIAKOSE,

JUDGE.

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